

REMARKS

New claims 32-39 are added. No new matter is added as the originally-filed application supports the new claims at, for example, pages 6-7. Claims 22-39 are pending in the application.

Claims 22-31 stand rejected under 35 U.S.C. §112, first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors had possession of the claimed invention (pg. 2 of paper no. 10). Specifically, the Examiner states that the "claims recite an annealing temperature 'of at least 550°C'" which is not supported by the specification, and refers to page 6 of the specification that recites "greater than 400°C", "800-1050°C", "800-900°C", and "most preferably 850°C" (pg. 2 of paper no. 10). Respectfully, the Examiner is mistaken.

The Examiner is respectfully reminded that Federal Circuit law and the MPEP (8th Edition) state in determining compliance with the written description requirement, the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that the inventors had possession of the invention as claimed. MPEP §2163.02 (8th Edition) *citing Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). **Notably**, the subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. MPEP §2163.02 (8th Edition). That is,

"[f]rom the standpoint of the description requirement, ... the description need not be *in ipsius verbis* [i.e., "in the same words"] [as the claims] to be sufficient" MPEP §2163 II.A.3.(a) (8th Edition) *citing Martin v. Johnson*, 454 F.2d 746, 172 USPQ 391, 395 (CCPA 1972).

Dealing specifically with recited *ranges* in the context of the written description requirement, the Federal Circuit Court opined that "ranges found in applicant's claims need not correspond *exactly* to those disclosed in [the specification]; issue is whether one skilled in the art could derive the claimed ranges from the [] disclosure". *Vas-Cath, Inc. v. Mahurkar*, 19 USPQ2d at 1119 (emphasis in case) (citations omitted). For example, the *In re Wertheim* court opined that the description of an invention as employing solids content within the range of 25-60% along with specific embodiments of 36% and 50% would lead persons skilled in the art to conclude that claims reciting solids content range of "between 35% and 60%" are supported by the invention disclosed. MPEP §2163.05 III. (8th Edition) *citing In re Wertheim* 541 F.2d. 257, 191 USPQ 90, 98 (CCPA 1976) ("[b]roadly articulated rules are particularly inappropriate in this area" speaking to applying the description requirement to narrowed claims involving ranges. 191 USPQ at 97).

Consequently, given the above authority, it is inconceivable that the originally-filed application reciting to "greater than 400°C" does not support the claim recitation to "at least 550°C" as it is within the range of "greater than 400°C". Those skilled in the art would understand that the recitation "of at least

550°C" is supported by the disclosure because 550°C is a subset "of greater than about 400°C". Accordingly, the fundamental factual inquiry of whether the specification conveys with reasonable clarity to those skilled in the art that the inventors had possession of the invention as claimed would have to be answered in the affirmative, and therefore, the §112 rejection is inappropriate and should be withdrawn. Applicant respectfully requests withdrawal of such rejection in the next office action.

Moreover, since no other rejections are presented against the claims Applicant respectfully requests allowance of claims 22-31 in the next office action.

New claims 32-39 depend from one of the independent claims, and therefore, are allowable for the reasons discussed above with respect to the claims, as well as for their own recited features which are not shown or taught by the art of record.

This application is now believed to be in immediate condition for allowance, and action to that end is respectfully requested. If the Examiner's next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to issuance of any

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such subsequent action.


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Respectfully submitted,

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Group Art Unit 1756
Examiner Kathleen Duda
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VERSION WITH MARKINGS TO SHOW CHANGES MADE ACCOMPANYING
RESPONSE TO AUGUST 8, 2002 OFFICE ACTION

In the Claims

The claims have been amended as follows. Underlines indicate insertions
and ~~strikeouts~~ indicate deletions.

No amendments to the claims.

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